

(iv) \$50,000 from July 1, 1996 and thereafter.

(d) A government securities broker that falls within the provisions of paragraph (c)(2) of §402.2 shall maintain not less than the greater of:

(1) The amount of liquid capital required under paragraph (a) of §402.2; or

(2) The amount of liquid capital, after deducting total haircuts, of:

(i) \$5,000 through June 30, 1995;

(ii) \$11,000 from July 1, 1995 through December 31, 1995;

(iii) \$18,000 from January 1, 1996 through June 30, 1996; and

(iv) \$25,000 from July 1, 1996 and thereafter.

[60 FR 11026, Mar. 1, 1995; 60 FR 12825, Mar. 8, 1995]

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

Sec.

403.1 Application of part to registered brokers and dealers.

403.2 Hypothecation of customer securities.

403.3 Use of customers' free credit balances.

403.4 Customer protection—reserves and custody of securities.

403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

403.6 Compliance with part by futures commission merchants.

403.7 Effective dates.

AUTHORITY: Sec. 101, Public Law 99-571, 100 Stat. 3209; sec. 4(b), Public Law 101-432, 104 Stat. 963; sec. 102, sec. 106, Public Law 103-202, 107 Stat. 2344 (15 U.S.C. 78o-5(b)(1)(A), (b)(4)).

SOURCE: 52 FR 27947, July 24, 1987, unless otherwise noted.

§403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with §240.8c-1 of this title (SEC Rule 8c-1), as modified by §§403.2 (a), (b) and (c), with §240.15c2-1 of this title (SEC Rule 15c2-1), with §240.15c3-2 of this title (SEC Rule 15c3-2), as modified by §403.3, and with §240.15c3-3 of this title (SEC Rule 15c3-3), as modified by

§§403.4 (a)-(d), (e)(2)-(3), (f)-(i), and (l), constitutes compliance with this part.

[59 FR 9405, Feb. 28, 1994]

§403.2 Hypothecation of customer securities.

Every registered government securities broker or dealer shall comply with the requirements of §240.8c-1 of this title concerning hypothecation of customer securities with the following modifications:

(a) In §240.8c-1(a), the words "no government securities broker or dealer" shall be substituted for the words "no member of a national securities exchange, and no broker or dealer who transacts a business in securities through the medium of such member."

(b) Section 240.8c-1(d) is modified to read as follows:

"(d) *Exemption for clearing liens.* The provisions of paragraphs (a)(2), (a)(3) and (f) of this section shall not apply to any lien or claim of a clearing bank, or the clearing corporation (or similar department or association) of a national securities exchange or a registered national securities association, for a loan made to acquire any securities subject to said lien and to be repaid on the same calendar day, which loan is incidental to the clearing of transactions in securities or loans through such bank, corporation, department or association; *provided, however*, that for the purpose of paragraph (a)(3) of this section, 'aggregate indebtedness of all customers in respect of securities carried for their accounts' shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph."

(c) References to "member, broker or dealer" mean "government securities broker or dealer."

§403.3 Use of customers' free credit balances.

Every registered government securities broker or dealer shall comply with the requirement of §240.15c3-2 of this title concerning the use of customer free credit balances. For purposes of this section, all references to "broker or dealer" in §240.15c3-2 shall include government securities brokers and dealers.

§ 403.4 Customer protection—reserves and custody of securities.

Every registered government securities broker or dealer shall comply with the requirements of §§ 240.15c3-3 and 240.15c3-3a of this title (SEC Rule 15c3-3 and Exhibit A thereto), with the following modifications:

(a) References to “broker or dealer” include government securities brokers and dealers.

(b) “Fully paid securities,” as defined in § 240.15c3-3(a)(3) of this title, includes all securities held by a government securities broker or a government securities dealer for the account of a customer who has made full payment for such securities.

(c) “Margin securities,” as defined in § 240.15c3-3(a)(4) of this title, includes any securities for which a customer has not made full payment and for which the customer has received an extension of credit by a government securities broker or government securities dealer for a portion of the purchase price.

(d) “Excess margin securities,” as defined in § 240.15c3-3(a)(5) of this title, includes margin securities carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer’s account or accounts with the broker or dealer.

(e)(1) For purposes of this section, § 240.15c3-3(b)(4)(i)(C) is modified to read as follows:

“(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Act of 1970 will not provide protection to the counterparty with respect to the repurchase agreement.”

(2) For purposes of this section, § 240.15c3-3(b)(4)(ii) is modified to read as follows:

“(ii) For purposes of this paragraph (4), securities are in the broker’s or dealer’s control only if they are in the control of the broker or dealer within the meaning of § 240.15c3-3(c)(1), (c)(3), (c)(5), (c)(6), or § 403.4(f) of this title.”

(3) For purposes of this section, § 240.15c3-3(b)(4)(iv) is redesignated § 240.15c3-3(b)(4)(iv)(A) and paragraph (b)(4)(iv)(B) is added to read as follows:

“(B) A person that is a non-U.S. citizen residing outside of the United

States or a foreign corporation, partnership, or trust may waive, but only in writing, the right to receive the confirmation required by paragraph (b)(4)(i)(B) of this section.”

(f)(1) Securities under the control of a broker or dealer, as described in § 240.15c3-3(c) of this title, shall include securities maintained by a broker or dealer in an account at a depository institution, as defined in section 19(b)(A)(i)-(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)-(vi)), which depository institution has a book-entry securities account at a Federal Reserve Bank through which it provides clearing services (“clearing bank”), provided the securities are maintained in a Segregated Account of the government securities broker or dealer. For purposes of this paragraph (f)(1) and paragraph (h) of this section, a Segregated Account is an account (other than a clearing account) of the government securities broker or dealer maintained on the books of a clearing bank pursuant to a written clearing agreement with such clearing bank which provides that:

(i) Such account is established for the purpose of segregating securities of counterparties or customers of such broker or dealer from proprietary securities of the broker or dealer;

(ii) The broker or dealer is entitled to direct the disposition of the securities; and

(iii) The clearing bank does not have, and will not assert, any claim or lien against such securities nor will the clearing bank grant any third party, including any Federal Reserve Bank, any interest in such securities so long as they are maintained in the segregated account.

(2) For purposes of this section, § 240.15c3-3(c)(2) of this title is redesignated as paragraph (c)(2)(i) and new paragraph (c)(2)(ii) is added to read as follows:

“(ii) Are carried for the account of any customer by a government securities broker or dealer in an account designated exclusively for customers of the government securities broker or dealer with a registered broker or dealer or another registered government securities broker or dealer (the “carrying broker or dealer”) in compliance

with instructions of the registered government securities broker or dealer to the carrying broker or dealer that the securities are to be maintained free of any charge, lien or claim of any kind in favor of the carrying broker or dealer or any persons claiming through such carrying broker or dealer; or”.

(g) For the purposes of this section, §240.15c3-3(d)(2) of this title is modified to read as follows:

“(2) Securities included on its books or records as failed to receive more than 30 calendar days, or in the case of mortgage-backed securities, more than 60 calendar days, then the government securities broker or government securities dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain possession or control of securities so failed to receive through a buy-in procedure or otherwise; or”

(h) In addition to the notification required by §240.15c3-3(i) of this title, whenever any government securities broker or dealer instructs its clearing bank to place securities in a Segregated Account (as defined in paragraph (f)(1) of this section), and the clearing bank refuses to do so as of the close of business on that day, the broker or dealer shall, in accordance with §240.17a-11(f) of this title, give telegraphic notice of the notification by the clearing bank within 24 hours and within 48 hours of the telegraphic notice, file a report stating what steps are being taken to correct the situation.

(i) For purposes of this section, §240.15c3-3(l) of this title is modified to read as follows:

“(l) *Delivery or disposition of securities.* Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

“(1) Fully-paid securities to which the customer is entitled;

“(2) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

“(3) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.”.

(j) Except with respect to a government securities interdealer broker subject to the financial responsibility requirements of §402.1(e) and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, §240.15c3-3(e)(3) is modified for purposes of this section to read as follows:

“(3) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o-5 (a)(1)(A)) which has a ratio of liquid capital to total haircuts (calculated in accordance with part 402 of this chapter) of 1.8 or greater and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding \$1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent of the amount so computed no later than 1 hour after the opening of banking business on the second following business day. If a registered government securities broker or dealer, computing on a monthly basis, has, at the time of any required computation, a ratio of liquid capital to total haircuts of less than 1.8, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when its ratio of liquid capital to total haircuts

was less than 1.8. Computations in addition to the computation required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The registered government securities broker or dealer shall make and maintain a record of each such computation made pursuant to this paragraph (3) or otherwise and preserve such record in accordance with § 240.17a-4.”.

(k) Except with respect to a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, Note E(5) of § 240.15c3-3a of this title is modified for purposes of this section to read as follows:

“(5) Debit balances in margin accounts (other than omnibus accounts) shall be reduced by the amount by which any single customer's debit balance exceeds 25% (to the extent such amount is greater than \$50,000) of the government securities broker's or dealer's liquid capital unless such broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (e.g., the separate accounts of an individual, accounts under common control or subject to cross guarantees) shall be deemed to be a single customer's accounts for purposes of this provision.”.

(l) For purposes of this section, the suspension of § 240.15c3-3(m) of this title (38 FR 12103, May 9, 1973) is no longer effective and the paragraph is modified to read as follows: “(m) If a government securities broker or government securities dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the government securities broker or dealer) and if for any reason whatever the government securities broker or government securities dealer

has not obtained possession of the government securities, other than mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the government securities broker or government securities dealer shall immediately thereafter close the transaction with the customer by purchasing, or otherwise obtaining, securities of like kind and quantity. For purposes of this paragraph (m), the term “customer” shall not include a broker or dealer who maintains a special omnibus account with another broker or dealer in compliance with section 4(b) of Regulation T (12 CFR 220.4(b)).

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988; 59 FR 9406, Feb. 28, 1994; 60 FR 18734, Apr. 13, 1995]

§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

(a) A government securities broker or dealer that is a financial institution shall:

(1) Comply with part 450 with respect to all government securities held for the account of customers of the financial institution in its capacity as a fiduciary or custodian (unless otherwise exempt pursuant to § 450.3); and

(2) Comply with part 450 and with paragraphs (b), (c) and (d) of this section with respect to all fully paid and excess margin government securities held for customers of the financial institution in its capacity as government securities broker or dealer, and government securities that are the subject of a repurchase agreement between the financial institution and certain counterparties as described in paragraph (d) of this section.

(b) A financial institution shall not be in violation of the possession or control requirements of paragraphs (c) and (d) of this section if, solely as the result of normal business operations, temporary lags occur between the time when a security is first required to be in the financial institution's possession

or control and the time when it is actually placed in possession or control, provided that the financial institution takes timely steps in good faith to establish prompt possession or control. In the event that a financial institution has accepted funds from a customer for the purchase of securities and the financial institution does not initiate the purchase of the specified securities by the close of the next business day after receipt of such customer's funds, the financial institution shall immediately deposit or redeposit the funds in an account belonging to such customer and send the customer notice of such deposit or redeposit.

(c)(1) On each business day a financial institution shall determine the quantity and issue of such securities, if any, that are required to be but are not in the financial institution's possession or control. As appropriate to bring such securities into possession or control, the financial institution shall:

(i) Promptly obtain the release of any lien, charge, or other encumbrance against such securities;

(ii) Promptly obtain the return of any securities loaned;

(iii) Take prompt steps to obtain possession or control of securities failed to receive for more than 30 calendar days, or in the case of mortgage-backed securities, for more than 60 calendar days; or

(iv) Take prompt steps to buy in securities as necessary to the extent any shortage of securities in possession or control cannot be resolved as required by any of the above procedures.

(2) The financial institution shall prepare and maintain a current and detailed description of the procedures and internal controls that it utilizes to comply with the possession or control requirements of this paragraph (c), which shall be made available upon request to its appropriate regulatory agency.

(3) Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are

issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

(i) Fully-paid securities to which the customer is entitled;

(ii) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

(iii) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.

(d)(1) A financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty shall:

(i) Obtain the repurchase agreement in writing;

(ii) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the day of initiation of the transaction and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date, par amount or coupon rate specified in the previous confirmation;

(iii) Advise the counterparty in the repurchase agreement that the funds held by the financial institution pursuant to a repurchase transaction are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation, or the National Credit Union Share Insurance Fund, as applicable;

(iv) If the counterparty agrees to grant the financial institution the right to substitute securities, include in the written repurchase agreement the provision by which the financial institution retains the right to substitute securities;

(v) If the counterparty agrees to grant the financial institution the right to substitute securities, include in the written repurchase agreement the following disclosure statement, which must be prominently displayed in the written repurchase agreement immediately preceding the provision governing the right to substitution:

“REQUIRED DISCLOSURE

The [seller] is not permitted to substitute other securities for those subject to this

agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute other securities. If the [buyer] grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they may be subject to liens granted by the [seller] to third parties and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegment substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy any lien or to obtain substitute securities.''; and

(vi) Maintain possession or control of securities that are the subject of the agreement in accordance with § 450.4(a) of this chapter, except when exercising its right of substitution in accordance with the provisions of the agreement and paragraph (d)(1)(iv) of this section.

(2)(i) A confirmation issued in accordance with paragraph (d)(1)(ii) of this section shall specify the issuer, maturity date, coupon rate, par amount and market value of the security and shall further identify a CUSIP or mortgage-backed security pool number, as appropriate, except that a CUSIP or a pool number is not required on the confirmation if it is identified in internal records of the broker or dealer that designate the specific security of the counterparty. For purposes of this paragraph (d)(2), the market value of any security that is the subject of the repurchase transaction shall be the most recently available bid price plus accrued interest, obtained by any reasonable and consistent methodology.

(ii) A person that is a non-U.S. citizen residing outside of the United States or a foreign corporation, partnership, or trust may waive, but only in writing, the right to receive the confirmation required by paragraph (d)(1)(ii) of this section.

(3) This paragraph (d) shall not apply to a repurchase agreement between the financial institution and a broker or dealer (including a government securities broker or dealer), a registered municipal securities dealer, or a director or principal officer of the financial in-

stitution or any person to the extent that his claim is explicitly subordinated to the claims of creditors of the financial institution.

(e)(1) A government securities broker or dealer that is a branch or agency of a foreign bank shall keep on deposit with an insured bank (as that term is defined in 12 U.S.C. 1813(h)) an amount equal to the amount that would be required to be set aside pursuant to § 240.15c3-3(e)(1) of this title with respect to government securities of customers of such branch or agency that are citizens or residents of the United States. The amount required to be deposited pursuant to this § 403.5(e)(1) may be reduced by the amount of assets pledged or deposited by the branch or agency pursuant to regulations promulgated by a Federal or State banking regulatory agency that are attributable to liabilities to customers which are included both in the calculation of the required pledge or deposit of assets and in the calculation of the amount to be set aside pursuant to § 240.15c3-3(e)(1) of this title.

(2) The amount deposited in accordance with this section shall be pledged to the appropriate regulatory agency of the branch or agency making the deposit for the exclusive benefit of the customers to whom the credit balances are owed.

(3) For purposes of making the calculation pursuant to § 240.15c3-3(e)(1) of this title, the terms "free credit balances," "other credit balances" and "credit balances" shall not include any funds placed in deposits or accounts enumerated at 12 CFR 204.2.

(4) For purposes of making the calculation pursuant to § 240.15c3-3(e)(1) of this title, the formula set forth at § 240.15c3-3a of this title shall be modified as follows:

(i) For purposes of this section, references to "securities account," "cash account," "margin account", or other customer accounts for purposes of this section shall not include any deposits or accounts enumerated at 12 CFR 204.2;

(ii) References to "security or "securities shall mean U.S. government securities;

(iii) References to net capital shall be inapplicable;

(iv) Item 2 is modified to read as follows:

“2. Monies borrowed by the branch or agency collateralized by securities carried for the account of customers. (See Note B.)”;

(v) Item 4 is modified to read as follows:

“4. Customers’ securities failed to receive only with respect to transactions for which payment has been received by and is under the control of the branch or agency. (See Note D.)”;

(vi) Note B is modified to read as follows:

“NOTE B. Item 2 shall include the principal amount of Restricted Letters of Credit obtained by members of Options Clearing Corporation which are collateralized by customers’ securities. Item 2 shall not include bank loans to customers in the ordinary course collateralized by the customers’ U.S. government securities.”; and

(vii) Note C is modified to read as follows:

“NOTE C. Item 3 shall include in addition to monies payable against customers’ securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities. Item 3 shall exclude cash collateral received pursuant to a written securities lending agreement that complies fully with the supervisory guidelines of its appropriate regulatory agency that expressly govern securities lending practices.”.

(5) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of this week, and the deposit so computed shall be made no later than one hour after the opening of banking business on the second following business day.

(6) A government securities broker or dealer that is a branch or agency of a foreign bank shall make and maintain a record of each computation made pursuant to paragraph (e)(5) of this section and preserve each such record for a period of not less than three years, the first two years in an easily accessible place.

(f)(1) For purposes of this section, the terms “fully paid securities,” “margin securities,” and “excess margin securi-

ties” shall have the meanings described in § 403.4 (b), (c) and (d).

(2) For purposes of this section, the term “customer” shall include any person from whom or on whose behalf a financial institution that is a government securities broker or dealer has received or acquired or holds securities for the account of that person or funds resulting from transactions in securities for or with such person or that represent principal, interest, or other proceeds of such securities. The term shall not include a broker or dealer that is registered pursuant to section 15, 15B or 15C (a)(1)(A) of the Act (15 U.S.C. 78o, 78o-4, 78o-5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o-5(a)(1)(B)) except with respect to securities maintained by such broker or dealer in a Segregated Account as defined in § 403.4(f)(1) and with respect to securities otherwise identified by such broker or dealer as customer securities for purposes of maintaining possession or control of such securities as required by this part. The term “customer” shall not include a director or principal officer of the financial institution or any other person to the extent that that person has a claim for property or funds, which by contract, agreement or understanding, or by operation of law, is part of the capital of the financial institution or is subordinated to the claims of creditors of the financial institution.

(g) If a financial institution executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the financial institution) and if for any reason whatever the financial institution has not obtained possession of the government securities, except mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the financial institution shall immediately thereafter close the transaction with

the customer by purchasing, or otherwise obtaining, securities of like kind and quantity.

(h) The appropriate regulatory agency of a financial institution that is a government securities broker or dealer may extend the period specified in paragraphs (c)(1)(iii) and (g) of this section on application of the financial institution for one or more limited periods commensurate with the circumstances, provided the appropriate regulatory agency is satisfied that the financial institution is acting in good faith in making the application and that exceptional circumstances warrant such action. Each appropriate regulatory agency should make and preserve for a period of not less than three years a record of each extension granted pursuant to this paragraph, which contains a summary of the justification for the granting of the extension.

(Approved by the Office of Management and Budget under control number 1535-0089)

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988; 55 FR 6604, Feb. 26, 1990; 59 FR 9406, Feb. 28, 1994; 60 FR 11026, Mar. 1, 1995]

§ 403.6 Compliance with part by futures commission merchants.

A registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC shall comply with the provisions of this part with respect to all customer funds and securities except those that are incidental to the broker's or dealer's futures-related business, as defined in § 240.3a43-1(b) of this title. For purposes of the preceding sentence, the term "customer" shall have the meaning set forth in § 240.15c3-3(a)(1) of this title.

§ 403.7 Effective dates.

(a) *General.* Except as provided in paragraphs (b) through (e) of this section, this part shall be effective on the last business day in October 1987.

(b) *Confirmations.* The requirements of §§ 403.4 and 403.5(d) to describe the specific securities that are the subject of a repurchase transaction, including the market value of such securities, on a confirmation at the initiation of a repurchase transaction or on substi-

tution of other securities shall be effective January 31, 1988.

(c) *Written repurchase agreements.* The requirement to obtain a repurchase agreement in writing with the provisions described in §§ 403.4 and 403.5(d) shall be effective October 31, 1987, in the case of new customers of a government securities broker or dealer and shall be effective January 31, 1988, in the case of existing customers of a government securities broker or dealer. For purposes of this paragraph, an "existing customer" of a government securities broker or dealer is any counterparty with whom the government securities broker or dealer has entered into a repurchase transaction on or after January 1, 1986, but before July 25, 1987. For purposes of this paragraph, a "new customer" of a government securities broker or dealer is any counterparty other than an existing customer.

(d) *Disclosures.* (1) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with paragraph (c) of this section, a government securities broker or dealer that is subject to § 403.4 shall furnish the counterparty with a separate interim disclosure document containing: (i) The disclosure referred to in § 403.4 concerning the Securities Investor Protection Act of 1970, and (ii) if applicable, the following disclosure:

"REQUIRED DISCLOSURE

Unless the [buyer] and the [seller] have agreed to the contrary, the [buyer's] securities are likely to be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to re-segregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities."

(2) For hold-in-custody repurchase transactions entered into before the effective date for obtaining a written repurchase agreement in accordance with

paragraph (c) of this section, a financial institution that is subject to § 403.5(d) shall furnish the counterparty with a separate interim disclosure document containing: (i) The disclosure referred to in § 403.5(d) concerning the inapplicability of deposit insurance, and (ii) if applicable, the following disclosure:

“REQUIRED DISCLOSURE

Unless the [buyer] and the [seller] have agreed to the contrary, the [buyer's] securities are likely to be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to third parties and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegment substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy any lien or to obtain substitute securities.”.

(3) In the case of hold-in-custody repurchase transactions initiated before August 31, 1987 and terminating on or after August 31, 1987, the disclosure document described in this paragraph (d) must be mailed to the counterparties involved on or before August 31, 1987. In the case of a hold-in-custody repurchase transaction initiated on or after August 31, the disclosure document described in this paragraph (d) must be provided to the counterparty involved no later than the day on which the first hold-in-custody repurchase transaction is initiated on or after August 31, 1987, unless the disclosure has already been provided to the counterparty in accordance with the preceding sentence.

(e) *Existing term repurchase transactions.* Notwithstanding paragraphs (b), (c) and (d) of this section, the requirements of §§ 403.4 and 403.5(d) (with respect to hold-in-custody repurchase transactions), with the exception of the requirements to confirm the substitution of securities subject to a repurchase transaction, shall not be applicable to any repurchase transaction, initiated on or before August 31, 1987,

that, by its terms, matures on a specific date after August 31, 1987.

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988]

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

Sec.

404.1 Application of part to registered brokers and dealers.

404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

404.3 Records to be preserved by registered government securities brokers and dealers.

404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.

404.5 Securities counts by registered government securities brokers and dealers.

AUTHORITY: 15 U.S.C. 78o-5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

SOURCE: 52 FR 27952, July 24, 1987, unless otherwise noted.

§ 404.1 Application of part to registered brokers and dealers.

Compliance by a registered broker or dealer with § 240.17a-3 of this title (pertaining to records to be made), § 240.17a-4 of this title (pertaining to preservation of records), § 240.17a-13 of this title (pertaining to quarterly securities counts) and § 240.17a-7 of this title (pertaining to records of non-resident brokers or dealers) shall constitute compliance with this part.

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17a-3 of this title (SEC Rule 17a-3), with the following modifications:

(1) References to “broker or dealer” and “broker or dealer registered pursuant to Section 15 of the Act” include registered government securities brokers or dealers.

(2) References to §§ 240.17a-3, 240.17a-4, 240.17a-5, and 240.17a-13 mean such